

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHARD SIDNEY GAHAGAN,

No. C 12-3165 CW  
CR 11-0044 CW

Movant,

v.

ORDER DENYING  
CERTIFICATE OF  
APPEALABILITY

UNITED STATES OF AMERICA,

Respondent.

Movant has filed a notice of appeal of the Court's order denying his § 2255 motion and a request for certificate of appealability. Movant's right to appeal the Court's denial of his section 2255 motion is governed by 28 U.S.C. section 2253(c), which states,

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from--

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c)(1)-(3). The Ninth Circuit has interpreted the phrase "circuit justice or judge" to include district court judges. United States v. Asrar, 116 F.3d 1268, 1269-70 (9th Cir

1 1997). A certificate of appealability should be granted "only if  
2 the applicant has made a substantial showing of the denial of a  
3 constitutional right." 28 U.S.C. § 2253(c)(2).

4 The Court certifies in accordance with 28 U.S.C. section 2253  
5 that, for the reasons set forth in the order denying the § 2255  
6 motion, none of the issues raised in the motion involves a  
7 substantial showing of the denial of a constitutional right. The  
8 certificate of appealability is denied.  
9

10 IT IS SO ORDERED.

11  
12 Dated: 9/19/2013

13   
14 CLAUDIA WILKEN  
15 United States District Judge  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28